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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
Kevin Rabska et al.	)	Group Art Unit: 3673
	)	
Serial No.: 10/762,407	)	Examiner: R. Santos
	)	
Filed: January 22, 2004	)	Confirmation No.: 4903
	)	
For: Assist Handle Assembly For Beds	)	Attorney Docket: 1-24313

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APPELLANTS' BRIEF  
UNDER 37 C.F.R. §1.192(c)

Honorable Sir:

This brief is in furtherance of a Notice of Appeal, filed on July 6, 2005. The fees required under 37 C.F.R. §1.17(b), and any required petition for extension of time for filing this brief and fees therefor, are dealt with in an accompanying Transmittal of Appeal Brief. This brief is transmitted in triplicate. (37 C.F.R. §1.192(a))

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REAL PARTY IN INTEREST

The above-identified patent application is owned by Assignor, Sunrise Medical HHG Inc., a corporation organized and existing by virtue of the laws of the State of California, having its principal place of business in Longmont, Colorado.

### RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that are known to Appellants, the Appellants' representative, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

### STATUS OF CLAIMS

Independent claim 12 has been allowed. Claims 1-11 and 13-35 are pending in the application.

Claim 24 is objected to because of informalities.

Claims 1-11, 13-32 and 34 are rejected to under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claim 27 is rejected to under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention.

Claims 1-7 and 13 stand finally rejected under 35 U.S.C. §102(a) as being clearly anticipated by U.S. Patent No. 5,381,571, to Gabhart (hereinafter Gabhart).

Claims 1 and 5-7 stand finally rejected under 35 U.S.C. §102(a) as being clearly anticipated by U.S. Patent No. 5,069,465, to Stryker et al. (hereinafter Stryker).

Claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35 stand finally rejected under 35 U.S.C. §102(a) as being clearly anticipated by U.S. Patent No. 6,076,209, to Paul (hereinafter Paul).

### STATUS OF AMENDMENTS

In the Advisory Action dated June 15, 2005, the Examiner indicated that Appellants' last amendment, which was filed on May 27, 2005, has been not entered.

## SUMMARY OF THE INVENTION

Appellants' invention, as defined in independent claim 1, reads on the assist handle assembly 10 shown in FIGS. 1-6, and comprises an assist handle 12 and a handle mount 14 (page 2, lines 21-22, or paragraph [013], FIGS. 1 and 6). The handle mount 14 is adapted to be supported by a bed 82 for supporting the assist handle 12 for movement relative to the bed 82 (page 2, lines 22-23, or paragraph [013], FIG. 6). The assist handle 12 is readily removable from the handle mount 14 without the aid of tools (page 4, lines 7-19, or paragraph [016], FIGS. 1-4). One or more latch configurations 16 are provided for latching the assist handle 12 in one or more fixed positions relative to the bed 82 (page 2, line 22 through page 3, line 2, or paragraph [013], FIGS. 1, 5 and 6).

Claim 2 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the assist handle 12 in claim 1 as having a first member 18 and a second member 20 that orbits about the first member 18 when the assist handle 12 is moved relative to the handle mount 14 (page 3, lines 4-7, or paragraph [014], FIG. 1).

Claim 3 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the assist handle 12 in claims 1 and 2 as being an inverted U-shaped tubular structure. The first and second members 18, 20 defined in claim 2 are further defined by legs of the U-shaped structure (page 3, lines 7-9, paragraph [014], FIGS. 1 and 6).

Claim 4 reads on the assist handle assembly 10 shown in FIGS. 1-6, and recites one or more cross members 22, 24 extending between the first and second members 18, 20 in claims 2 and 3 (page 3, lines 9-11, or paragraph [014], FIGS. 1 and 6).

Claim 5 reads on the assist handle assembly 10 shown in FIGS. 1-6, and recites a grip that is applied to the assist handle in claim 1 (page 3, lines 14-16, or paragraph [014], FIG. 1).

Claim 6 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the handle mount 14 in claim 1 as having a bracket 28 for supporting the

handle mount 12 relative to a bed 82 (page 3, lines 17-18, or paragraph [015], FIGS. 1-4 and 6).

Claim 7 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the handle mount 12 of claims 1 and 6 as having a plate 32, 34 with a hole 36, 38 therein and a generally cylindrical sleeve 40 supported relative to the plate 32, 34 with a passage 42 therethrough that aligns with the hole 36, 38 (page 3, lines 19-24, or paragraph [015], FIGS. 1-4).

Claim 8 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines a hole 36 in claim 7 as having an irregular shape (page 3, line 27 through page 4, line 1, or paragraph [015], FIGS. 1-4) and the assist handle 12 as having a member 50 that mates with the hole 36 (page 4, lines 7-8 and 9-11, or paragraph [016], FIGS. 1-4).

Claim 9 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the hole 36 in claim 8 as having at least one flat side 46 and a curved side 48 (page 4, lines 10-11, or paragraph [016], FIGS. 2-4).

Claim 10 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the hole 36 in claim 8 as having two opposing flat sides 46 and two opposing curved sides 48 (page 4, lines 10-11, or paragraph [016], FIGS. 2-4).

Claim 11 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the mating member 50 of the assist handle 12 in claim 8 as having flat surfaces 52 and curved surfaces 54 that correspond to the flat sides 46 and the curved sides 48 defining the hole 36 in the plate 32 in claim 10 (page 4, lines 9-10, or paragraph [016], FIGS. 2-4).

Claim 12 reads on the assist handle assembly 10 shown in FIGS. 1-6, and comprises an assist handle 12 and a handle mount 14 (page 2, lines 21-22, or paragraph [013], FIGS. 1 and 6) for supporting the assist handle 12 for movement relative to a bed 82 (page 2, lines 22-23, or paragraph [013], FIG. 6). The handle mount 12 is supported by the bed 82 via a bracket 28 (page 3, lines 17-18, or

paragraph [015], FIGS. 1-4 and 6). The handle mount 12 includes a plate 32 having a hole 36 therein and a generally cylindrical sleeve 40 supported relative to the plate 32 with a passage 42 therethrough that aligns with the hole 36 in the plate 32 (page 3, lines 19-24, or paragraph [015], FIGS. 1-4). The hole 36 in the plate 32 is defined by two opposing flat sides 46 and two opposing curved sides 48 that mate with a mating member 50 of the assist handle 12 having flat surfaces 52 and curved surfaces 54 that correspond to the flat sides 46 and the curved sides 48 defining the hole 36 in the plate 32 (page 4, lines 10-11, or paragraph [016], FIGS. 2-4). The assist handle 12 further has a flange 56 that is disposed above the mating member 50 and a partial annular groove 58 defined between the curved surfaces 54 and the flange 56. The annular groove 58 is sized to receive the flat sides 46 defining the hole 36 in the plate 32 upon inserting the mating member 50 in the hole 36 and rotating the assist handle 12 to trap the mating member 50 in the hole 36 (page 4, lines 12-20, or paragraph [016], FIGS. 2-4). Claim 12 further defines one or more latch configurations 16 for latching the assist handle 12 in one or more fixed positions relative to the bed 82 (page 2, line 22 through page 3, line 2, or paragraph [013], FIGS. 1, 5 and 6).

Claim 12 is generally distinguished from claim 1 in that claim 12 includes a plate having a hole therein, a generally cylindrical sleeve with a passage therethrough that aligns with the hole in the plate, a member that mates with the hole, a flange that is disposed above the mating member, and a partial annular groove defined between the mating member and the flange for trapping the mating member in the hole. These features are not included in claim 1.

Claim 13 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the latch configuration 16 in claim 1 as having a receiver 60 for receiving a member 20 of the assist handle 12 and a hole 62 and the member 20 of the assist handle 12 supports a locking pin 64 that is releasably engageable with the hole 62 to hold the member 20 in the receiver 60 (page 5, lines 1-5, or paragraph [018]).

Claim 14 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the latch configuration 16 in claim 13 as having a cam surface 66 which the pin 64 engages as the assist handle 12 enters the receiver 60 to urge the pin 64 in a first direction until the assist handle 12 completely enters the receiver 60, at which point the pin 64 plunges into the hole 62 (page 5, lines 5-10, or paragraph [018], FIGS. 1, 5 and 6).

Claim 15 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the pin 64 in claim 14 as having a ball end 68 to encourage a smooth engagement between the pin 64 and the cam surface 66 (page 5, lines 7-9, or paragraph [017], FIG. 5).

Claim 16 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the pin 64 in claim 14 as being urged in a second direction, opposite the first direction, by a spring 70 to urge the pin 64 into the hole 62 (page 5, lines 15 and 16, or paragraph [018], FIG. 5).

Claim 17 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the handle mount 14 in claim 1 as being secured to a mounting channel 80 and the one or more latch configurations 16 as being a latch configuration 16, 16' disposed on the channel 80 at opposing sides of the mount 14. The assist handle 12 is adapted to pivot in a first direction to engage a first one of the latch configurations 16 in a first position and about 180-degrees in a second direction to engage a second one of the latch configurations 16' in a second position (page 6, lines 1-8, or paragraph [020], FIGS. 1 and 6).

Claim 18 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the channel 80 in claim 17 as being structured to be mounted to a bed 82 (page 6, lines 11-13, or paragraph [020], FIGS. 1 and 6).

Independent claim 19 reads on the assist handle assembly 10 shown in FIGS. 1-6, and comprises an assist handle 12 and a handle mount 14 that is adapted to be supported by a bed 82 for supporting the assist handle 12 for movement relative to the

bed 82. The assist handle 12 is readily removable from the handle mount 14 without the aid of tools (page 4, lines 7-19, or paragraph [016], FIGS. 1-4). One or more latch configurations 16 is spaced from the handle mount 14 for latching the assist handle 12 in one or more fixed positions relative to the bed 82 (page 2, line 22 through page 3, line 2, or paragraph [013], FIGS. 1, 5 and 6).

Claim 19 is generally distinguished from claims 1 and 12 in that claim 19 includes one or more latch configurations that are spaced from a handle mount, which is not included in either claim 1 or claim 12.

Claim 20 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the assist handle 12 in claim 19 as having two spaced members 18, 20 including a first member 18 that is rotatable relative to the handle mount 14 and a second member 20 that orbits about the first member 18 as the first member 18 is rotated relative to the handle mount 14 (page 3, lines 4-7, or paragraph [014], FIG. 1).

Claim 21 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the assist handle 12 in claim 20 is being an inverted U-shaped tubular structure having legs defined by the first and second members 18, 20 of the assist handle 12 (page 3, lines 7-9, paragraph [014], FIGS. 1 and 6).

Claim 22 reads on the assist handle assembly 10 shown in FIGS. 1-6, and recites a cross member 22, 24 extending between the legs in claim 21 (page 3, lines 9-11, or paragraph [014], FIGS. 1 and 6) and being vertically positioned between the free ends of the legs and an upper end of the U-shaped structure.

Claim 23 reads on the assist handle assembly 10 shown in FIGS. 1-6, and recites a grip that is applied to the assist handle in claim 19, wherein the grip is insulative to insulate a user from the assist handle (page 3, lines 14-16, or paragraph [014], FIG. 1).

Claim 24 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the handle mount 12 in claim 19 as having a plate 32, 34 with a hole 36, 38 therein and a sleeve 40 with a passage 42 therethrough that aligns with the hole

36, 38 to receive a first member 18 of the assist handle 12 (page 3, lines 19-24, or paragraph [015], FIGS. 1-4).

Claim 25 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the hole 36 in claim 24 as having an irregular shape (page 3, line 27 through page 4, line 1, or paragraph [015], FIGS. 1-4) and the first member 18 of the assist handle 12 as having at least a partial annular groove that rotationally interlocks with the irregular shape of the hole 36 to prevent removal of the first member 18 of the assist handle 12 from the hole 36 (page 4, lines 12-20, or paragraph [016], FIGS. 2-4).

Claim 26 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the hole 36 in the plate 32 in claim 24 as having one or more flat sides 46 and one or more curved sides 48 and the first member 18 of the assist handle 12 as having one or more flat surfaces 52 and one or more curved surfaces 54 that mate with the one or more flat sides 46 and one or more curved sides 48 of the hole 36 in the plate 32 (page 4, lines 10-11, or paragraph [016], FIGS. 2-4).

Claim 27 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the first member 18 of the assist handle 12 in claim 24 as having a radial flange 56 that partially defines the partial annular groove 58 and that restricts vertical travel of the first member 18 of the assist handle 12 through the hole 36 in the plate 32 (page 4, lines 12-20, or paragraph [016], FIGS. 2-4).

Claim 28 reads on the assist handle assembly 10 shown in FIGS. 1-6, and recites an interlock that permits insertion of a first member 18 of the assist handle 12 into the handle mount 14 when in a first position and prevents removal of the first member 18 of the assist handle 12 from the handle mount 14 when rotated to a second position (page 4, lines 20-21, or paragraph [017], FIGS. 2-4).

Claim 29 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the latch configurations 16 in claim 19 as having a receiver 60 for receiving a member 20 of the assist handle 12 and having a portion shaped complementary to the member 20 of the assist handle 12 and a detent 62 transverse to



the receiver 60, and wherein the member 20 of the assist handle 12 has a pin 64 that is releasably engageable with the detent 62 to hold the member 20 in the receiver 60 (page 5, lines 1-5, or paragraph [018], FIGS. 1, 5 and 6).

Claim 30 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the latch configuration in claim 29 as having a ramp surface 66, wherein the pin 64 is engageable with the ramp surface 66 to urge the pin 64 in a first direction until the assist handle 12 is in the receiver 60 and the pin 64 enters the detent 62 (page 5, lines 5-10, or paragraph [018], FIGS. 1, 5 and 6).

Claim 31 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the pin 64 in claim 30 as being urged into the detent 62 by a spring 70 (page 5, lines 15 and 16, or paragraph [018], FIG. 5).

Claim 32 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines the latch configuration in claim 29 as having a threaded hole 76 and a tab 78 spaced from the threaded hole 76, wherein the threaded hole 76 is provided for receiving a threaded fastener 79 for securing the one or more latch configurations 16 to a supporting surface and the tab 78 engages a hole in the supporting surface (shown in FIG. 5 but not referenced) to prevent the one or more latch configurations 16 from rotating about the threaded fastener 79 (page 4, paragraph [017], FIG. 5).

Independent claim 33 reads on the assist handle assembly 10 shown in FIGS. 1-6, and comprises an assist handle 12 (page 2, lines 21 and 22, or paragraph [013], FIGS. 1, 5 and 6); a mounting member 80 that is adapted to be supported by a bed 82 (page 6, lines 11-13, or paragraph [020], FIG. 6); and a handle mount 14 (page 2, lines 21 and 22, or paragraph [013], FIGS. 1, 5 and 6) supported by the mounting member 80 (page 6, line 1, or paragraph [020], FIG. 6), wherein the handle mount 14 is provided for supporting the assist handle 12 for movement relative to the bed 82 (page 2, lines 21-23, or paragraph [013], FIG. 6). One or more latch configurations 16 (page 2, line 23 through page 3, line 1, or paragraph [013], FIGS. 1, 5 and 6) are supported by the mounting member 80 in a spaced relation to the handle mount 14, wherein the

one or more latch configurations 16 are provided for latching the assist handle 12 in one or more fixed positions relative to the bed 82 (page 6, lines 1-13, or paragraph [020], FIG. 6).

Claim 33 is generally distinguished from claims 1, 12 and 19 in that claim 33 includes a mounting member that is adapted to be supported by a bed, which is not included in claims 1, 12 or 19.

Claim 34 reads on the assist handle assembly 10 shown in FIGS. 1-6, and further defines assist handle 12 in claim 33 as being readily removable from the handle mount 14 without the aid of tools (page 4, lines 7-19, or paragraph [016], FIGS. 1-4).

Independent claim 35 reads on the articulating bed 82 shown in FIG. 6, and comprises a sleep surface frame 84 (page 6, line 12, or paragraph [020], FIG. 6) that is adapted to be articulated between fully raised and fully lowered positions . A mounting member 80 is adapted to be supported by the bed 82 (page 6, lines 11-13, or paragraph [020], FIG. 6). A handle mount 14 supported by the mounting member 80 (page 6, line 1, or paragraph [020], FIGS. 1-4 and 6). One or more latch configurations 16 are supported by the mounting member 80 in a spaced relation to the handle mount 14 (page 6, lines 1 and 2, or paragraph [020], FIGS. 1, 5 and 6). An assist handle 12 is supported for rotation by the handle mount 14 (page 2, lines 22-23, or paragraph [013], FIG. 6). The one or more latch configurations 16 are provided for latching the assist handle 12 in one or more fixed positions relative to the bed 82 (page 6, lines 3-13, or paragraph [020], FIGS. 1, 5 and 6).

Claim 35 is generally distinguished from claims 1, 12, 19 and 33 in that claim 35 includes an articulating bed, which is not included in claims 1, 12, 19 and 33.

### ISSUES

There are six issues for consideration by the Board of Patent Appeals and Interferences.

The first issue is whether claim 24 meet all formal requirements.

The second issue is whether claims 1-11, 13-32 and 34 fail to comply with the written description requirement of 35 U.S.C. §112, first paragraph.

The third issue is whether claim 27 is indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention as required under 35 U.S.C. §112, second paragraph.

The fourth issue is whether claims 1-7 and 13 are anticipated under 35 U.S.C. §102(a) by Gabhart.

The fifth issue is whether claims 1 and 5-7 are anticipated under 35 U.S.C. §102(a) by Stryker.

The sixth issue is whether claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35 are anticipated under 35 U.S.C. §102(a) by Paul.

#### GROUPING OF CLAIMS

Independent claim 1 does not stand or fall with any other claim because the provision of an assist handle assembly comprising an assist handle; a handle mount that is adapted to be supported by a bed for supporting the assist handle for movement relative to the bed so that the assist handle is readily removable from the handle mount without the aid of tools; and one or more latch configurations that are provided for latching the assist handle in one or more fixed positions relative to the bed presents a unique structure with specifically advantageous characteristics.

Claims 2-4 stand or fall with independent claim 1.

Claim 5 does not stand or fall with independent claim 1 because the provision of a grip applied to the assist handle presents a unique structure with specifically advantageous characteristics.

Claims 6 and 7 stand or fall with independent claim 1.

Claim 8 does not stand or fall with claims 1, 6 or 7 because the provision of a hole that has an irregular shape and an assist handle that has a member that mates with the hole presents a unique structure with specifically advantageous characteristics.

Claim 9 does not stand or fall with claims 1 or 6-8 because the provision of a hole that has at least one flat side and a curved side presents a unique structure with specifically advantageous characteristics.

Claim 10 does not stand or fall with claims 1 or 6-8 because the provision of a hole that is defined by two opposing flat sides and two opposing curved sides presents a unique structure with specifically advantageous characteristics.

Claim 11 does not stand or fall with claims 1, 6-8 or 10 because the provision of a mating member of an assist handle that has flat surfaces and curved surfaces that correspond to flat sides and curved sides defining a hole in a plate of a handle mount presents a unique structure with specifically advantageous characteristics.

Independent claim 12 does not stand or fall with any other claims because the provision of a plate having a hole therein, a generally cylindrical sleeve with a passage therethrough that aligns with the hole in the plate, a member that mates with the hole, a flange that is disposed above the mating member, and a partial annular groove defined between the mating member and the flange for trapping the mating member in the hole presents a unique structure with specifically advantageous characteristics.

Claim 13 does not stand or fall with claim 1 because the provision of a latch configuration that includes a hole and receiver for receiving a member of the assist handle, wherein the member of the assist handle supports a locking pin that is releasably engageable with the hole of the latch configuration to hold the member in the receiver presents a unique structure with specifically advantageous characteristics.

Claim 14 does not stand or fall with claims 1 or 13 because the provision of a latch configuration that includes a cam surface that is engaged by a pin as an assist handle enters a receiver to urge the pin in a first direction until the assist handle completely enters the receiver, at which point the pin plunges into the hole presents a unique structure with specifically advantageous characteristics.

Claim 15 does not stand or fall with claims 1, 13 or 14 because the provision of a pin that includes a ball end to encourage a smooth engagement between the pin and a cam surface presents a unique structure with specifically advantageous characteristics.

Claim 16 does not stand or fall with claims 1, 13 or 14 because the provision of a pin that is urged in a second direction opposite a first direction by a spring to urge the pin into a hole presents a unique structure with specifically advantageous characteristics.

Claim 17 does not stand or fall with independent claim 1 because the provision of a handle mount that is secured to a mounting channel and latch configuration disposed on the channel at opposing sides of the mount, wherein an assist handle is adapted to pivot in a first direction to engage a first one of the latch configurations in a first position and about 180-degrees in a second direction to engage a second one of the latch configurations in a second position, presents a unique structure with specifically advantageous characteristics.

Claim 18 does not stand or fall with claims 1 or 17 because the provision of a channel that is structured to be mounted to a bed presents a unique structure with specifically advantageous characteristics.

Independent claim 19 does not stand or fall with any other claims because the provision of an assist handle assembly comprising an assist handle; a handle mount that is adapted to be supported by a bed for supporting the assist handle for movement relative to the bed, wherein the assist handle is readily removable from the handle mount without the aid of tools; and one or more latch configurations spaced from the handle mount for latching the assist handle in one or more fixed positions relative to the bed presents a unique structure with specifically advantageous characteristics.

Claim 20 does not stand or fall with independent claim 19 because the provision of an assist handle having two spaced members, including a first member that is rotatable relative to a handle mount and a second member that orbits about the

first member as the first member is rotated relative to the handle mount, presents a unique structure with specifically advantageous characteristics.

Claim 21 does not stand or fall with claims 19 or 20 because the provision of an assist handle that is an inverted U-shaped tubular structure having first and second members that are defined by legs of the U-shaped structure presents a unique structure with specifically advantageous characteristics.

Claim 22 does not stand or fall with claims 19, 20 or 21 because the provision of a cross member that extends between the legs of a U-shaped tubular assist handle, wherein the cross member is vertically positioned between the free ends of the legs and the upper end of the U-shaped tubular assist handle, presents a unique structure with specifically advantageous characteristics.

Claim 23 does not stand or fall with independent claim 19 because the provision of a grip that is applied to an assist handle, wherein the grip is insulative to insulate a user from the assist handle, presents a unique structure with specifically advantageous characteristics.

Claim 24 does not stand or fall with independent claim 19 because the provision of a handle mount that includes a plate having a hole therein and a sleeve having a passage therethrough that aligns with the hole to receive a first member of an assist handle presents a unique structure with specifically advantageous characteristics.

Claim 25 does not stand or fall with claims 1 or 24 because the provision of a hole 36 in the plate of a handle mount, wherein the hole has an irregular shape, and a first member of an assist handle has at least a partial annular groove that rotationally interlocks with the irregular shape of the hole to prevent removal of the first member of the assist handle from the hole presents a unique structure with specifically advantageous characteristics.

Claim 26 does not stand or fall with claims 1, 24 or 25 because the provision of a hole in the plate of a handle mount, wherein the hole has one or more flat sides and one or more curved sides, and a first member of an assist handle has one or more flat

surfaces and one or more curved surfaces that mate with the one or more flat sides and one or more curved sides of the hole in the plate presents a unique structure with specifically advantageous characteristics.

Claim 27 does not stand or fall with claims 19, 24 or 25 because the provision of a first member of an assist handle, wherein the first member has a radial flange that partially defines the partial annular groove and restricts vertical travel of the first member of the assist handle through a hole in the plate of a handle mount, presents a unique structure with specifically advantageous characteristics.

Claim 28 does not stand or fall with independent claim 19 because the provision of an interlock that permits insertion of a first member of an assist handle into a handle mount when in a first position and prevents removal of the first member of the assist handle from the handle mount when rotated to a second position presents a unique structure with specifically advantageous characteristics.

Claim 29 does not stand or fall with independent claim 19 because the provision of one or more latch configurations that include a receiver for receiving a member of an assist handle and having a portion shaped complementary to the member of the assist handle and a detent transverse to the receiver, wherein the member of the assist handle has a pin that is releasably engageable with the detent to hold the member in the receiver, presents a unique structure with specifically advantageous characteristics.

Claim 30 does not stand or fall with claims 19 or 29 because the provision of a latch configuration having a ramp surface, wherein a pin of the latch configuration is engageable with the ramp surface to urge the pin in a first direction until an assist handle is in a receiver and the pin enters a detent presents a unique structure with specifically advantageous characteristics.

Claim 31 does not stand or fall with claims 19, 29 or 30 because the provision of a pin that is to be urged into a detent in the receiver of a latch configuration by a spring presents a unique structure with specifically advantageous characteristics.

Claim 32 does not stand or fall with claims 19 or 29 because the provision of a latch configuration having a threaded hole and a tab spaced from the threaded hole, wherein the threaded hole is provided for receiving a threaded fastener for securing the latch configuration to a supporting surface and the tab engages a hole in the supporting surface to prevent the latch configuration from rotating about the threaded fastener presents a unique structure with specifically advantageous characteristics.

Independent claim 33 does not stand or fall with any other claim because the provision of an assist handle assembly that comprises an assist handle; a mounting member that is adapted to be supported by a bed; a handle mount supported by the mounting member, wherein the handle mount is provided for supporting the assist handle for movement relative to the bed; and one or more latch configurations supported by the mounting member in a spaced relation to the handle mount, wherein the one or more latch configurations are provided for latching the assist handle in one or more fixed positions relative to the bed, presents a unique structure with specifically advantageous characteristics.

Claim 34 does not stand or fall with independent claim 33 because the provision of an assist handle that is readily removable from the handle mount without the aid of tools presents a unique structure with specifically advantageous characteristics.

Independent claim 35 does not stand or fall with any other claim because the provision of an articulating bed that comprises a sleep surface frame that is adapted to be articulated between fully raised and fully lowered positions; a mounting member that is adapted to be supported by the bed; a handle mount supported by the mounting member; one or more latch configurations that are supported by the mounting member in a spaced relation to the handle mount; and an assist handle that is supported for rotation by the handle mount, wherein the one or more latch configurations are provided for latching the assist handle in one or more fixed positions relative to the bed presents a unique structure with specifically advantageous characteristics.



## ARGUMENTS

### Claim Objection

Claim 24 is objected to because of an informality: namely, in the third line of the claim, the claim language "a passage" should have read "the hole." In Appellants' last amendment, which was filed on May 27, 2005, claim 24 was amended to change "a passage" to "the hole", which should have overcome the objection to claim 24, according to the Examiner's comments on page 2, paragraph 1, of the Office Action dated February 24, 2005. However, this amendment was not entered according to the Advisory Action dated June 15, 2005 because the amendment was not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. However, entry of the amendment would have at least eliminated this issue for appeal, and thus arguably should have been entered.

### 35 U.S.C. §112 (first paragraph)

Claims 1-11, 13-32 and 34 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In particular, the Examiner asserts that the limitation "wherein the assist handle is 'readily removable from the handle mount without the aid of tools,'" as recited in independent claims 1 and 19, and dependent claim 34, is not supported by the disclosure as originally filed.

The following is a quotation from the appropriate paragraph of 35 U.S.C. §112 that forms the basis of the Examiner's rejection:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or

with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In accordance with 37 C.F.R. §1.75(d)(1):

The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

The policy underlying 35 U.S.C. §112, first paragraph is set forth in MPEP §2162, as follows:

To obtain a valid patent, a patent application must be filed that contains a full and clear disclosure of the invention in the manner prescribed by 35 U.S.C. 112, first paragraph.

In exchange for the patent rights granted, 35 U.S.C. 112, first paragraph, sets forth the minimum requirements for the quality and quantity of information that must be contained in the patent to justify the grant. [T]he patentee must disclose in the patent sufficient information to put the public in possession of the invention and to enable those skilled in the art to make and use the invention.

"[T]he 'essential goal' of the description of the invention requirement is *to clearly convey the information that an Appellant has invented the subject matter which is claimed.*" *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977) (emphasis added). Another goal is to put the public in possession of what the Appellant claims as the invention. See *Regents of the University of California v. Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089 (1998).

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. See, e.g., *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116.

An Appellant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, *figures*, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997) (emphasis added). See also *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 68, 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998); *Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406; *Amgen, Inc. v. Chugai Pharmaceutical*, 927 F.2d 1200, 1206, 18 USPQ2d 1016, 1021 (Fed. Cir. 1991) (one must define a compound by "whatever characteristics sufficiently distinguish it").

Information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter. *MPEP* §2163.06.

The fundamental factual inquiry is *whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, Appellant was in possession of the invention as now claimed*. See, e.g., *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117 (emphasis added).

Paragraph [016], on page 4, of the present application describes a mating relationship between the assist handle and the handle mount recited in the claims. This relationship is described as one wherein the assist handle is inserted into the handle mount and rotated to interlock (see paragraph [017]) the assist handle and the handle mount. In FIGS. 1 and 2, the assist handle is removed. In FIGS. 3 and 4, the assist handle and the handle mount are interlocked. It is abundantly clear to any person skilled in the art to which the invention pertains that the assist handle is readily removable from the handle mount, without the aid of tools, by rotating the assist handle and lifting the assist handle from the handle mount.

Neither the statute nor the rules require the precise claim language be in the written description. The statute only requires that written description enable any person skilled in the art to which the invention pertains to make and use the invention,

and it does. The rules require that the claims conform to the invention as set forth in the specification so that the meaning of the terms in the claims may be ascertainable by reference to the description, and it is. The essential goal of the description requirement is met in that the description clearly conveys the information that an Appellant has invented the subject matter which is claimed.

Although the precise claim language is not in the written description, the patent specification describes the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that Appellants had possession of the claimed invention at the time the application was filed.

As clearly set forth in *MPEP* §2163.06, the information contained in the drawings of the application as filed may be added to any other part of the application without introducing new matter. The use of the limitation "wherein the assist handle is 'readily removable from the handle mount without the aid of tools,'" as recited in claims 1 and 19 and dependent claim 34, as amended, is clearly supported by the disclosure as originally filed, and compliance with the written description requirement is met.

In view of the foregoing remarks and arguments, the rejection of the claims under 35 U.S.C. §112, first paragraph, is improper. Accordingly, the rejection of claims with regard to 35 U.S.C. §112, first paragraph, should be reversed.

#### 35 U.S.C. §112 (second paragraph)

Claim 27 is rejected to under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention. The Examiner asserts the claim language "the partial annular groove" as recited in claim 27 lacks proper antecedent basis, thereby rendering the claim indefinite. In Appellants' last amendment, which was filed on May 27, 2005, claim 27 was amended to depend from claim 25, which recites "a partial annular groove" and thus provides proper antecedent basis for the claim

language "the partial annular groove" recited in claim 27. This amendment should have overcome the objection to claim 27. However, the amendment was not entered according to the Advisory Action dated June 15, 2005 because the amendment was not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. However, entry of the amendment would have at least eliminated this issue for appeal. Consequently, the amendment arguably should have been entered.

### 35 U.S.C. §102 (Gabhart)

Claims 1-7 and 13 stand finally rejected under 35 U.S.C. §102(a) as being clearly anticipated by Gabhart.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

*Verdegaal Bros. v Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the Appellants' claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claim 1 recites an *assist handle*. Assist handles are well known, as set forth in the Background of the Invention, *for aiding occupants entering and exiting a bed*. Gabhart does not disclose an *assist handle* but instead discloses guard rails 11, 13, 15, 17 (see line 14 of col. 2) and a closure 22 (see line 24 of col. 2). The guard rails are railings for guarding against trespass, to *prevent occupants from entering and exiting a bed*, not for aiding occupants entering and exiting a bed. The closure closes gaps between guard rails (see line 30 of col. 1). It *does not aid an occupant entering and exiting the bed*. In the absence of some teaching of an *assist handle*, claim 1 should be allowable over Gabhart as written.

Claim 1 also recites a handle mount that is *adapted to be supported by a bed for supporting the assist handle for movement relative to the bed*. The closure in Gabhart is *not mounted to the bed* but rather is mounted to a locking mechanism 29 (see lines 23-57 in col. 2), which likewise is *not mounted to the bed* but instead is mounted to a guardrail. In the absence of some teaching of an assist handle *supported by a bed*, claim 1 should be allowable over Gabhart as written.

Claim 1 further recites an assist handle that is *readily removable* from a handle mount *without the aid of tools*. Gabhart fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*. Instead, Gabhart discloses a locking mechanism 29 secured to a guard rail 11 by a fastener 25. The fastener is not disclosed as being *readily removable without the aid of tools*, as required for the assist handle recited in claim 1. In the absence of some teaching of an assist handle that is *readily removable without the aid of tools*, claim 1 should be allowable over Gabhart as written. Accordingly, the rejection of claim 1 in view of Gabhart should be reversed.

Claims 2-7 and 13 depend from claim 1 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites a grip *applied* to the assist handle. The guard rails disclosed by Gabhart do not have a grip *applied* thereto. In the absence of some teaching of a grip *applied* to the assist handle, claim 5 should be allowable over Gabhart in its own right. Consequently, the rejection of claim 5 should be reversed.

Claim 6 recites a handle mount that includes a bracket for supporting the handle mount *by the bed*. The closure of Gabhart is supported by the locking mechanism. Hence, the locking mechanism most qualifies as a mount. However, it is not clear what feature of Gabhart the Examiner considers to be a bracket. Though the locking mechanism supports the closure, the locking mechanism is not supported by the bed.

In response to the foregoing argument, the Examiner relies upon Merriam Webster's Collegiate Dictionary (Tenth Edition), which defines a bracket as "a fixture

projecting from a wall or column," and concluded that element 25 of Gabhart qualifies as a bracket in accordance with this definition, and as such, Gabhart anticipates claim 6. However, element 25 of Gabhart is a fastener, as clearly shown in the drawing (i.e., Figs. 4 and 5), and one of ordinary skill in the art of the invention would not interpret a fastener as *a bracket*. In this regard, Gabhart fails to disclose a bracket as recited in claim 6. In the absence of some teaching of a bracket for supporting the handle mount *by the bed*, claim 6 should be allowable over Gabhart in its own right. Consequently, the rejection of claim 6 should be reversed.

Claim 7 recites a handle mount that includes a plate having a hole therein and a generally cylindrical sleeve supported relative to the plate with a passage therethrough that aligns with the hole. Gabhart does not disclose a plate with a hole and a sleeve supported relative to the plate with a passage that aligns with the hole. At best, Gabhart discloses a tubular casing 43 with a hole 41 and a tubular frame 23 with a passage 49, 51 that can align with the hole in the tubular casing. However, neither the casing nor the frame is a plate.

In response to the foregoing argument, the Examiner argues that Gabhart teaches a plate having a hole therein, referring Appellants to Fig. 4, element 43 as a planar component having a tubular portion with a hole 41 formed therein, and a generally cylindrical sleeve 23 supported relative to the plate with a passage 51 therethrough that aligns with the hole. However, Gabhart does not anticipate claim 7 because the planar member referred to by the Examiner *does not have a hole that aligns with the passage 51 through the sleeve 23*. In this regard, claim 7 should be allowable in its own right. Consequently, the rejection of claim 7 should be reversed.

Claim 13 recites a latch configuration that includes a receiver for receiving a member of the assist handle and a hole, and the member of the assist handle supports a locking pin that is releasably engageable with the hole to hold the member in the receiver. The Examiner argues that Gabhart teaches a latch configuration including a receiver 43 for receiving a member (a vertical portion of element 23) of an assist

handle 22, wherein the member supports a locking pin 39 (when situated in the locked position as shown in Fig. 4) that is releasably engageable with the hole, as recited in claim 13. However, Gabhart does not anticipate claim 13 because Gabhart *does not disclose a locking pin supported by a member of an assist handle*, but rather shows a locking pin supported by a handle of a locking mechanism 29. Since Gabhart fails to disclose *a locking pin supported by an assist handle*, claim 13 should be allowable in its own right. Consequently, the rejection of claim 13 should be reversed.

### 35 U.S.C. §102 (Stryker)

Claims 1 and 5-7 stand finally rejected under 35 U.S.C. §102(a) as being clearly anticipated by Stryker.

Claim 1 recites *an assist handle* for aiding an occupant entering and exiting a bed. A handle mount, which is adapted to be supported by the bed, is provided for supporting the assist handle for movement relative to the bed. The assist handle is *readily removable from a handle mount without the aid of tools*.

Stryker fails to disclose an assist handle for aiding an occupant entering and exiting a bed. Instead, Stryker discloses a push handle for aiding an attendant in maneuvering a bed 10. In addition, Stryker fails to disclose an assist handle that is *readily removable from a handle mount without the aid of tools*. Since Stryker fails to disclose an *assist handle* that is *readily removable from a handle mount without the aid of tools*, as set forth in claim 1, claim 1 should be allowable over Stryker as written. Consequently, the rejection of claim 1 in view of Stryker should be reversed.

Claims 5-11 depend from claim 1 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites a grip *applied* to the assist handle. The push handles disclosed by Stryker do not have a grip *applied* thereto. In the absence of some teaching of a grip *applied* to the assist handle, claim 5 should be allowable over Stryker in its own right. Consequently, the rejection of claim 5 should be reversed.



Claim 7 recites a handle mount that includes a plate having a hole therein and a generally cylindrical sleeve supported relative to the plate with a passage therethrough that aligns with the hole. Stryker fails to disclose a plate with a hole, and a sleeve supported relative to the plate with a passage that aligns with the hole. At best, Stryker discloses a casting 48, 29 with a hole 58 and a sleeve 61. However, the sleeve does not have a passage that can align with the hole in the casting. Alternatively, Stryker discloses a sleeve 61 with a central opening 62 and a metal part 83. However, the metal part does not have a passage that can align with the opening in the sleeve.

In response to the foregoing argument, the Examiner argues that Stryker teaches a plate having a hole 58 therein and a generally cylindrical sleeve 51 supported relative to the plate (through element 57) with a passage 62 therethrough that aligns with the hole. However, Stryker does not anticipate claim 7 because the hole 58 referred to by the Examiner *is not in a plate* but instead is in a frustoconical projection (see col. 5, lines 1 and 2). In this regard, claim 7 should be allowable over Stryker in its own right. Consequently, the rejection of claim 7 should be reversed.

### 35 U.S.C. §102 (Paul)

Claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35 stand finally rejected under 35 U.S.C. §102(a) as being clearly anticipated by Paul.

Claim 1 recites an assist handle and a handle mount for supporting the assist handle for movement relative to a bed. The assist handle is *readily removable* from the handle mount *without the aid of tools*. Paul fails to disclose an assist handle. Instead, Paul discloses a side rail 200, which is well known in the art for guarding against trespass, to *prevent occupants from entering and exiting a bed*, not for *aiding* occupants entering and exiting a bed, like the assist rail set forth in claim 1. Paul also fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*. In the absence of some teaching of an *assist handle* that is *readily*

*removable without the aid of tools*, claim 1 should be allowable over Paul as written. Consequently, the rejection of claim 1 in view of Paul should be reversed.

Claims 5, 6 and 13 depend from claim 1 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 5 recites a grip *applied* to the assist handle. The side rail disclosed by Paul does not have a grip *applied* thereto. In the absence of some teaching of a grip *applied* to the assist handle, claim 5 should be allowable over Paul in its own right. Consequently, the rejection of claim 5 should be reversed.

In addition, claim 13 recites a latch configuration that includes *a hole and a receiver* for receiving a member of the assist handle, wherein the member of the assist handle supports *a locking pin* that is releasably engageable with the hole to hold the member in the receiver. Claim 14 recites *a cam surface* for urging a pin in a first direction. Claim 15 recites a pin with *a ball end*. Claim 16 recites *a spring* for urging a pin in a second direction. Paul fails to disclose any of these features. In the absence of some teaching of these features, these claims should be allowable over Paul in their own right. Consequently, the rejection of these claims should be reversed.

Claim 19 recites an assist handle and a handle mount for supporting the assist handle for movement relative to a bed. The assist handle is *readily removable* from the handle mount *without the aid of tools*. Paul fails to disclose an assist handle. Instead, Paul discloses a side rail 200, which is well known in the art for guarding against trespass, to *prevent occupants from entering and exiting a bed*, not for *aiding* occupants entering and exiting a bed, like the assist rail set forth in claim 19. Paul also fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*. In the absence of some teaching of an *assist handle* that is *readily removable without the aid of tools*, claim 19 should be allowable over Paul as written. Consequently, the rejection of claim 19 in view of Paul should be reversed.

Claims 23 and 28-32 depend from claim 19 and should be allowable for at least the same reason(s) as claim 1, as set forth above. In addition, claim 23 recites an

*insulative grip applied* to the assist handle. The side rail disclosed by Paul does not have an *insulative grip applied* thereto. In the absence of some teaching of an *insulative grip applied* to the assist handle, claim 23 should be allowable over Paul in its own right. Consequently, the rejection of claim 23 should be reversed.

Claim 28 has been amended to change "into" to "from" to correct a minor typographical error. This amendment is neither made to avoid prior art nor required for purposes related to patentability. Claim 28, as amended, recites *an interlock that permits the insertion of an assist handle into a handle mount when in a first position and the removal of the assist handle from the handle mount when in a second position*. Paul fails to disclose the features of the invention set forth in claim 28. In the absence of some teaching of these features, claim 28 should be allowable over Paul in its own right. Consequently, the rejection of claim 28 should be reversed.

In addition, claim 29 recites *a detent and a pin*. Claim 30 recites *a ramp surface* for urging a pin in a first direction. Claim 31 recites *a spring* for urging a pin in a second direction. Paul fails to disclose any of these features. In the absence of some teaching of these features, these claims should be allowable over Paul in their own right. Consequently, the rejection of these claims should be reversed.

Claims 33 and 35, like claims 1 and 19, recite an assist handle. Paul fails to disclose an assist handle but instead discloses a side rail. Claims 33 and 35 should be allowable for at least the same reason(s) as claims 1 and 19, as set forth above. Consequently, the rejection of these claims should be reversed.

Claim 34 depends from claim 33 and should be allowable for at least the same reason(s) as claim 33. In addition, claim 34 recites an assist handle that is *readily removable* from the handle mount *without the aid of tools*. Paul fails to disclose an assist handle that is *readily removable* from a handle mount *without the aid of tools*, as set forth in claim 34. In the absence of such teaching, claim 34 should be allowable over Paul in its own right. Consequently, the rejection of claim 34 should be reversed.

In paragraph 7, of the Official Letter, the Examiner, in fewer than three lines, rejects 16 claims (i.e., claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35) in view of Paul, citing by column and line a portion of Paul that is dedicated to the disclosure of a side rail. After having thoroughly reviewed Paul, Appellants fail to see how Paul discloses any of the features set forth in the claims. Appellants respectfully requested that the Examiner specifically point out, clearly citing reference numerals, those features in Paul that the Examiner believes anticipate the features in the claims. The Examiner did not comply with Appellants' request.

#### General Argument

The Examiner asserts that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed invention from a prior art apparatus satisfying the claimed structural limitation, citing *Ex parte Masham*, 2 USPQ2d 1647 (Fed. Cir. 1987).

Masham claimed in the preamble an apparatus "for mixing flowing developer material." The court held that the preambular recitation of the claim language "for mixing flowing developer material" should not be given patentable weight. All of Appellants' claims recite an assist handle assembly *for use on an articulating bed*. However, in the body of Appellants' claims, there is recited a handle mount for supporting the assist handle for movement relative to the bed." *Masham* does not address the use of such language in the body. Appellants respectfully requested that the Examiner clarify the claim language to which he intends *Masham* to apply. The Examiner did not comply with Appellants' request.

The Examiner also asserts that the recitation of an assist handle that is "*readily removable* from a handle mount *without the aid of tools*" does not provide sufficient structure. It has been held that structural attributes of interrelated component parts of a claimed assembly can be defined in functional terms, such as with the use of the terms "readily removable from a handle mount without the aid of tools," as set forth in

Appellants' claims. There is nothing inherently wrong with defining some part of an invention in functional terms. A functional limitation is an attempt to define something by what it does, rather than by what it is. Functional language must be evaluated and considered just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. See *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976), where it was held that limitations such as "members adapted to be positioned" serve to precisely define structural attributes of interrelated component parts of the claimed assembly; *MPEP* §2173.05(g).

With regard to the specific claim language "*readily removable ... without the aid of tools*" being dependent upon the particular user, it has been held that similar claim language "removably connecting" means separable without need for tools. See *Burke Inc. v. Everest & Jennings Inc.* 29 USPQ2d 1393 (CAFC 1993). Such language has been held to meet the requirements of 35 USC 112, second paragraph. In the same way, the language "*readily removable ... without the aid of tools*" meets the requirements of 35 U.S.C. §112, second paragraph. No further structure is required.

In view of the forgoing, the recitation of an assist handle that is "*readily removable* from a handle mount *without the aid of tools*" meets the requirements of 35 U.S.C. §112 and defines the claimed invention over the cited references.

#### Claims Outstanding

At the bottom of page 5 of the Final Office Action dated February 24, 2005, the Examiner *agreed* with Appellants' arguments concerning the novelty of claim 17 in view of Gabhart and the novelty of claims 8-11 in view of Stryker. As a consequence, the Examiner has *withdrawn* his rejection of these claims.

In addition, none of the cited references discloses or suggests the invention set forth in claims 18-22, 24-27, or 32.

### Final Office Action

The Examiner, in the Final Office Action dated February 24, 2005, asserted that Appellants' amendment necessitated new grounds of rejection. However, the Final Office Action is improper for the following reasons.

The Examiner agreed with Appellants arguments concerning the rejection of claims 14 and 17, and has withdrawn his rejection of the claims (page 5 of the Office Action dated February 24, 2005). Similarly, the Examiner agrees with Appellants' arguments concerning the rejection of claims 8-11, and has withdrawn his rejection of these claims in view of the prior art of record. As a consequence, the Examiner should have indicated that claims would be allowable if amended to overcome the rejection of claim 1, from which the claims depend. Appellants should have had the opportunity to rewrite these claims in independent form, excluding of the claim language "without the aid of tools", which was not necessary to place the claims in condition for allowance since the art of record failed to disclose or suggest the features set forth in the claims. For at least this reason, the final rejection of these claims was improper.

In addition, arguments presented in favor of the novelty of claim 14 were not based on any amendment to the claim but instead pointed out novel features that were present in the claim when the claim was originally filed. Consequently, claim 14 was allowable, as originally filed, over Gabhart and Stryker in its own right. A subsequent and final rejection of claim 14 over Paul, a newly applied reference, was not necessitated by an amendment. For this additional reason, the final rejection was not proper.

Further, claim 24 was a newly presented claim in Appellants' response, dated November 24, 2004, to a non-Final Office Action, dated August 30, 2004. Claim 24, as presented, contained a minor typographical error, which the Examiner pointed out in an objection to the claim in the proceeding Final Office Action, dated February 24, 2005. The Examiner objected to the claim because of an informality, pointing out that, in the third line of the claim, the claim language "a passage" should have read "the

hole" (page 2, paragraph 1, of the Office Action dated February 24, 2005). However, the claim was not rejected based on any art of record. The Examiner's failure to reject the claim on the merits rendered the Final Office Action improper. Appellants should have been afforded the opportunity to amend the claim to correct the minor typographical error and place the claim in condition for allowance over the art of record.

Following the Final Office Action, and responsive to the Examiner's objection, Appellants' filed an amendment, dated May 27, 2005, wherein claim 24 was amended simply to change the language "a passage" to read "the hole", as suggested by the Examiner (page 2, paragraph 1, of the Office Action dated February 24, 2005). This should have overcome the objection to claim 24, and absent some art of record to the contrary, should have placed the claim in condition for allowance. However, this amendment was not entered according to the Advisory Action dated June 15, 2005 because the amendment was not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. However, entry of the amendment would have overcome the Examiner's objection to the claim, and absent prior art to the contrary, should have placed the claim in condition for allowance.

### CONCLUSION

In view of the foregoing arguments, the Examiner's rejection of claims 1-11, 13-32 and 34 under 35 U.S.C. §112, first paragraph, claims 1-7 and 13 under 35 U.S.C. §102(a) as being clearly anticipated by Gabhart, claims 1 and 5-7 under 35 U.S.C. §102(a) as being clearly anticipated by Stryker, and claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35 under 35 U.S.C. §102(a) as being clearly anticipated by Paul, are in error, and should be reversed.

Appellants accordingly request that the Board of Patent Appeals and Interferences reverse the Examiner as to all the aforementioned rejections and remand the application back to the Examiner for entry of the amendment to claims 24 and 27,

which should overcome the objection and rejection of these claims and place the application in condition for allowance.

Respectfully submitted,

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## APPENDIX OF CLAIMS ON APPEAL

1. An assist handle assembly for use on an articulating bed, the assembly comprising:

an assist handle;

a handle mount that is adapted to be supported by the bed for supporting the assist handle for movement relative to the bed, the assist handle being readily removable from the handle mount without the aid of tools; and

one or more latch configurations for latching the assist handle in one or more fixed positions relative to the bed.

2. The assembly according to claim 1, wherein the assist handle has a first member and a second member that orbits about the first member when the assist handle is moved relative to the handle mount.

3. The assembly according to claim 2, wherein the assist handle is an inverted U-shaped tubular structure and the first and second members are defined by legs of the U-shaped structure.

4. The assembly according to claim 3, further comprising one or more cross members extending between the first and second members.

5. The assembly according to claim 1, further comprising a grip applied to the assist handle.
6. The assembly according to claim 1, wherein the handle mount includes a bracket, the handle mount adapted to be supported by the bed by the bracket.
7. The assembly according to claim 6, wherein the handle mount includes a plate having a hole therein and a generally cylindrical sleeve is supported relative to the plate with a passage therethrough that aligns with the hole.
8. The assembly according to claim 7, wherein the hole has an irregular shape and the assist handle has a member that mates with the hole.
9. The assembly according to claim 8, wherein the hole is defined by at least one flat side and a curved side.
10. The assembly according to claim 8, wherein the hole is defined by two opposing flat sides and two opposing curved sides.

11. The assembly according to claim 10, wherein the mating member of the assist handle has flat surfaces and curved surfaces that correspond to the flat sides and the curved sides defining the hole in the plate.

12. An assist handle assembly for use on an articulating bed, the assembly comprising:

an assist handle;

a handle mount for supporting the assist handle for movement relative to the bed, the handle mount being supported by the bed via a bracket, the handle mount including a plate having a hole therein and a generally cylindrical sleeve supported relative to the plate with a passage therethrough that aligns with the hole in the plate, the hole in the plate being defined by two opposing flat sides and two opposing curved sides that mate with a mating member of the assist handle having flat surfaces and curved surfaces that correspond to the flat sides and the curved sides defining the hole in the plate; the assist handle further having a flange that is disposed above the mating member and a partial annular groove defined between the curved surfaces and the flange, the annular groove being sized to receive the flat sides defining the hole in the plate upon inserting the mating member in the hole and rotating the assist handle to trap the mating member in the hole; and

one or more latch configurations for latching the assist handle in one or more fixed positions relative to the bed.

13. The assembly according to claim 1, wherein the latch configuration includes a receiver for receiving a member of the assist handle and a hole and the member of the assist handle supports a locking pin that is releasably engageable with the hole to hold the member in the receiver.

14. The assembly according to claim 13, wherein the latch configuration further comprises a cam surface which the pin engages as the assist handle enters the receiver to urge the pin in a first direction until the assist handle completely enters the receiver, at which point the pin plunges into the hole.

15. The assembly according to claim 14, wherein the pin has a ball end to encourage a smooth engagement between the pin and the cam surface.

16. The assembly according to claim 14, wherein the pin is urged in a second direction opposite the first direction by a spring to urge the pin into the hole.

17. The assembly according to claim 1, wherein the handle mount is secured to a mounting channel and the one or more latch configurations includes a latch configuration disposed on the channel at opposing sides of the mount, the assist handle being adapted to pivot in a first direction to engage a first one of the latch configurations in a first position and about 180-degrees in a second direction to engage a second one of the latch configurations in a second position.

18. The assembly according to claim 17, wherein the channel is structured to be mounted to the bed.

19. An assist handle assembly for use on an articulating bed, the assembly comprising:

an assist handle;

a handle mount that is adapted to be supported by the bed for supporting the assist handle for movement relative to the bed, the assist handle being readily removable from the handle mount without the aid of tools; and

one or more latch configurations spaced from the handle mount for latching the assist handle in one or more fixed positions relative to the bed.

20. The assembly according to claim 19, wherein the assist handle has two spaced members including a first member that is rotatable relative to the handle mount and a second member that orbits about the first member as the first member is rotated relative to the handle mount.

21. The assembly according to claim 20, wherein the assist handle is an inverted U-shaped structure having legs with free ends defining the first and second members of the assist handle.

22. The assembly according to claim 21, further comprising a cross member extending between the legs and being vertically positioned between the free ends of the legs and an upper end of the U-shaped structure.

23. The assembly according to claim 19, further comprising a grip applied to the assist handle, the grip being insulative to insulate a user from the assist handle.

24. The assembly according to claim 19, wherein the handle mount comprises a plate having a hole therein and a sleeve having a passage therethrough that aligns with a passage to receive a first member of the assist handle.

25. The assembly according to claim 24, wherein the hole in the plate has an irregular shape and the first member of the assist handle having at least a partial annular groove that rotationally interlocks with the irregular shape of the hole in the plate to prevent removal of the first member of the assist handle from the hole in the plate.

26. The assembly according to claim 25, wherein the hole in the plate has one or more flat sides and one or more curved sides and the first member of the assist handle has one or more flat surfaces and one or more curved surfaces that mate with the one or more flat sides and one or more curved sides of the hole in the plate.

27. The assembly according to claim 24, wherein the first member of the assist handle further has a radial flange that partially defines the partial annular groove and restricts vertical travel of the first member of the assist handle through the hole in the plate.

28. The assembly according to claim 19, further including an interlock that permits insertion of a first member of the assist handle into the handle mount when in a first position and prevents removal of the first member of the assist handle into the handle mount when rotated to a second position.

29. The assembly according to claim 19, wherein the one or more latch configurations comprise:

a receiver for receiving a member of the assist handle and having a portion shaped complementary to the member of the assist handle;

a detent transverse to the receiver, the member of the assist handle having a pin that is releasably engageable with the detent to hold the member of the receiver.

30. The assembly according to claim 29, wherein the latch configuration further includes a ramp surface, the pin being engageable with the ramp surface to urge the pin in a first direction until the assist handle is in the receiver and the pin enters the detent.

31. The assembly according to claim 30, further comprising a spring for urging the pin into the detent.

32. The assembly according to claim 29, wherein the one or more latch configurations further include a threaded hole and a tab spaced from the threaded hole, the threaded hole being provided for receiving a threaded fastener for securing the latch configurations to a supporting surface and the tab engages a hole in the supporting surface to prevent the latch configuration from rotating about the threaded fastener.



33. An assist handle assembly for retrofit use on an articulating bed, the assembly comprising:

an assist handle;

a mounting member that is adapted to be supported by the bed;

a handle mount supported by the mounting member, the handle mount for supporting the assist handle for movement relative to the bed;

one or more latch configurations supported by the mounting member in a spaced relation to the handle mount, the one or more latch configurations for latching the assist handle in one or more fixed positions relative to the bed.

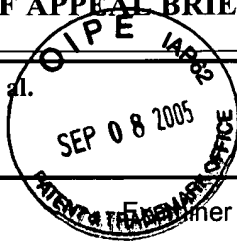
34. The assembly according to claim 33, wherein the assist handle is readily removable from the handle mount without the aid of tools.

35. An articulating bed comprising:

- a sleep surface frame that is adapted to be articulated between fully raised and fully lowered positions;
- a mounting member that is adapted to be supported by the bed;
- a handle mount supported by the mounting member;
- one or more latch configurations supported by the mounting member in a spaced relation to the handle mount; and
- an assist handle support for rotation by the handle mount, the one or more latch configurations for latching the assist handle in one or more fixed positions relative to the bed.

**TRANSMITTAL OF APPEAL BRIEF (Large Entity)**Docket No.  
1-24313

In Re Application Of: Kevin Rabska et al.

Application No.  
10/762,407Filing Date  
January 22, 2004Examiner  
R. SantosCustomer No.  
04859Group Art Unit  
3673Confirmation No.  
4903

Invention: Assist Handle Assembly For Beds

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on July 6, 2005.

The fee for filing this Appeal Brief is: \$500.00

- ☐ A check in the amount of the fee is enclosed.
- ☒ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 13-0005
- ☐ Payment by credit card. Form PTO-2038 is attached.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

  
Signature

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Dated: September 6, 2005

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

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